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FILED
Clerk of the Superior Court
JUL 18 2008
By: K SANDOVAL, Dkt.

TRANSACTION 20617588

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

Coordination Proceeding
Special Title (Rule 1550(b)):

JUDICIAL COUNCIL COORDINATION
PROCEEDING NOS. 4221, 4224, 4226 and
4228

The Honorable Ronald S. Prager
Coordination Trial Judge

**NATURAL GAS ANTI-TRUST CASES I,
II, III & IV**

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 18, 2008
Time: 10:00 a.m.
Courtroom: Dept. 71

This Document Relates To:
THE PRICE INDEXING CASES ONLY

1 WHEREAS, Plaintiffs' Co-Lead Counsel, on behalf of Plaintiffs and the proposed Class,
2 and defendant AEP Energy Services, Inc. ("AEP") have entered into a Settlement Agreement
3 intended to resolve this litigation against AEP;

4 WHEREAS, the Settlement Agreement sets forth the terms and conditions for the
5 proposed settlement and dismissals of actions against AEP, with prejudice, upon the terms and
6 conditions set forth therein;

7 WHEREAS, the Court has before it Plaintiffs' Motion for Preliminary Approval of Class
8 Action Settlement and Plaintiffs' Memorandum of Points and Authorities in Support of Motion
9 for Preliminary Approval of Class Action Settlement, together with supporting materials;

10 WHEREAS, the Court is satisfied that the settlement set forth in the Settlement
11 Agreement is the result of good faith, arm's-length settlement negotiations among competent and
12 experienced counsel for both the Plaintiffs and AEP; and

13 WHEREAS, the Court has conducted a hearing concerning the reasonableness of
14 proceeding with the proposed settlement, and good cause appearing therefore, now finds and
15 orders as follows:

16 **Preliminary Approval of Settlement and**
17 **Conditional Certification of the Settlement Class**

18 1. Terms used in this Order have the meanings assigned to them in the
19 Settlement Agreement and this Order.

20 2. The provisions of the Settlement Agreement are hereby preliminarily
21 approved, subject to further consideration thereof at the Fairness Hearing provided for below.
22 The Court finds that the settlement is sufficiently within the range of reasonableness that notice of
23 the proposed settlement should be given as provided in paragraphs 7-10 of this Order.

24 3. Pursuant to California Code of Civil Procedure Section 382, the Court
25 hereby conditionally certifies the following Settlement Class, defined as:

26 All individuals and entities who between January 1, 1999 and
27 December 31, 2002, inclusive (the "Class Period"), directly or
28 indirectly purchased natural gas in California for use. Excluded
from the Class are: individuals and entities who purchased natural
gas for resale or for generation of electricity for the purpose of

1 resale (but solely with respect to such purchases and not with
2 respect to other purchases); Defendants and their predecessors,
3 affiliates, subsidiaries, officers, and directors; federal, state and
4 local governments and governmental agencies; any and all judges
5 and justices assigned to hear any aspect of this litigation, along with
6 their spouses and any minor children residing in their households;
7 any persons within the third degree of relationship of any judge or
8 justice assigned to hear any aspect of this litigation.

9 The Settlement Class is divided into two subclasses as follows. The Core Natural Gas Subclass is
10 defined as:

11 All individuals and entities that were "core" or "core subscription"
12 natural gas customers of one or more of California's natural gas
13 utilities, including, without limitation, Southern California Gas
14 Company, Pacific Gas & Electric Company, San Diego Gas &
15 Electric Company, City of Long Beach Energy Department, and
16 Southwest Gas Corporation, at any time between January 1, 1999
17 and December 31, 2002.

18 The Non-Core Natural Gas Subclass is defined as:

19 All individuals and entities that were "non-core" natural gas
20 customers (excluding "core subscription" customers) of one or
21 more of California's natural gas utilities, including, without
22 limitation, Southern California Gas Company, Pacific Gas &
23 Electric Company, San Diego Gas & Electric Company, City of
24 Long Beach Energy Department, and Southwest Gas Corporation,
25 or who otherwise purchased natural gas pursuant to contract, at any
26 time between January 1, 1999 and December 31, 2002.

27 4. For settlement purposes only, certification of the proposed Settlement
28 Class and Subclasses is appropriate under California Code of Civil Procedure § 382. The Court
has considered the pleadings and arguments of Plaintiffs' counsel in support of the motion for
preliminary settlement approval, and finds that the Settlement Class and Subclasses are proper
and should be conditionally certified, for settlement purposes only, in the circumstances of this
case. Specifically, the Court finds that, for settlement purposes only, there is an ascertainable
class and a community of interest among the members of the Class and within each of the two
Subclasses. Certification of the Settlement Class and Subclasses for settlement purposes is the
best means for protecting the interests of all members of the Class and Subclasses.

5. The Court finds for the purposes of settlement only that: (i) the members of
the Settlement Class are so numerous that joinder would be impractical; (ii) there is a
commonality of interests among the members of the Settlement Class; (iii) there are questions of

1 law and fact that are common to the Settlement Class, and the common questions predominate
2 over individual questions; (iv) plaintiffs' claims are typical of the claims of absent Settlement
3 Class members; and (v) Plaintiffs will fairly and adequately represent the interests of the absent
4 Settlement Class members.

5 6. The Court finds for the purposes of settlement only that: (i) the members of
6 the Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a
7 commonality of interests among the members of the Core National Gas Subclass; (iii) there are
8 questions of law and fact that are common to the Core National Gas Subclass, and the common
9 questions predominate over individual questions; (iv) the claims of plaintiffs Mark and Susan
10 Benscheidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,
11 Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom
12 and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda, and Vittice
13 Corporation are typical of the claims of absent Core Natural Gas Subclass members; and (v) these
14 plaintiffs will fairly and adequately represent the interests of the absent Core Natural Gas
15 Subclass members.

16 7. The Court finds for the purposes of settlement only that: (i) the members of
17 the Non-Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there
18 is a commonality of interests among the members of the Non-Core Natural Gas Subclass;
19 (iii) there are questions of law and fact that are common to the Non-Core Natural Gas Subclass,
20 and the common questions predominate over individual questions; (iv) the claims of plaintiffs
21 A.L. Gilbert Company and H&M Roses, Inc. are typical of the claims of absent Non-Core Natural
22 Gas Subclass members; and (v) these plaintiffs will fairly and adequately represent the interests
23 of the absent Non-Core Natural Gas Subclass members.

24 8. The Court conditionally appoints plaintiffs Mark and Susan Benscheidt,
25 David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc., Dan L.
26 Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom and
27 Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda and Vittice
28 Corporation as representatives of the Settlement Class and the Core Natural Gas Subclass. The

1 Court further finds that Lieff, Cabraser, Heimann & Bernstein, LLP will adequately represent the
2 interests of the Settlement Class and the Core Natural Gas Subclass, and conditionally appoints
3 the firm to serve as Co-Lead Settlement Class Counsel and Lead Settlement Subclass Counsel for
4 the Core Natural Gas Subclass.

5 9. The Court conditionally appoints plaintiffs A.L. Gilbert Company and
6 H&M Roses, Inc. as representatives of the Settlement Class and the Non-Core Natural Gas
7 Subclass. The Court further finds that Engstrom Lipscom & Lack will adequately represent the
8 interests of the Settlement Class and the Non-Core Natural Gas Subclass, and conditionally
9 appoints the firm to serve as Co-Lead Settlement Class Counsel and Lead Settlement Subclass
10 Counsel for the Non-Core Natural Gas Subclass.

11 10. The Court appoints the members of the Plaintiffs' Executive Committee as
12 additional Settlement Class Counsel:

13 Saveri & Saveri Inc.

14 Girard, Gibbs and De Bartholomeo, LLP

15 Damrell, Nelson, Schrimp, Pollias, Pacher & Silva

16 Zelle, Hoffman, Voebel, Mason & Gette LLP

17 Krause & Kalfayan

18 Jenkins & Mulligan

19 Parish & Small

20 Baker, Burton & Lundy, P.C.

21 Murray & Howard

22 Kiesel, Boucher & Larson

23 11. If the Settlement Agreement is terminated or is not consummated for any
24 reason whatsoever, the conditional certification of the Settlement Class and Subclasses shall be
25 void with respect to the terminated settlement; AEP shall have reserved all its rights to oppose
26 any and all class certification motions and to contest the adequacy of the class plaintiffs as
27 representatives of any putative plaintiff class or subclass.
28

**Notice to Settlement Class Members
and Appointment of the Settlement Administrator**

12. On or before September 15, 2008 (the "Notice Date"), Co-Lead Settlement Class Counsel shall cause to be published a notice, substantially in the form attached as Exhibit B to the Declaration of Katherine Kinsella in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement ("Kinsella Declaration") in the publications listed in the Notice Program attached as Exhibit A to the Kinsella Declaration ("Publication Notice"). Prior to the Fairness Hearing, plaintiffs shall file and serve a sworn statement attesting to compliance with the provisions of this paragraph.

13. On or before the Notice Date, the Settlement Administrator (defined below) shall cause copies of the notice, substantially in the form attached as Exhibit C to the Kinsella Declaration ("Mail Notice") to be mailed by first class U.S. mail, postage pre-paid, to the lists of Non-Core Natural Gas Subclass members provided to the Settlement Administrator by natural gas utilities. The Settlement Administrator shall also cause copies of the Mail Notice to be mailed by first class U.S. mail, postage pre-paid, to any member of the Settlement Class who so requests via the toll-free telephone number established for that purpose. Prior to the Fairness Hearing, the Settlement Administrator shall file and serve a sworn statement attesting to compliance with the provisions of this paragraph.

14. In addition, Co-Lead Settlement Class Counsel shall cause to be established a website, identified in the Publication Notice and the Mail Notice, at which shall be posted: (a) the Mail Notice; (b) the Master Class Action Complaint; (c) the Settlement Agreements; (d) this Order; (e) the papers filed in support of final approval of the settlement and the application for attorneys' fees and reimbursement of expenses; and (f) any other pleadings or papers that Co-Lead Settlement Class Counsel deem appropriate.

15. The notice to be provided as set forth in the preceding three paragraphs is hereby found to be the best means practicable of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the

1 settlement approval process, in full compliance with due process and the notice requirements of
2 the California Rules of Court, Rules 3.766 and 3.769.

3 16. Co-Lead Settlement Class Counsel are authorized to retain Poorman
4 Douglas Corporation as the Settlement Administrator to perform in accordance with the terms of
5 the Settlement Agreement and this Order. The Settlement Administrator shall preserve any and
6 all written communications from members of the Settlement Class until October 1, 2013, subject
7 to further order of the Court. Copies of all written communications received by the Settlement
8 Administrator from members of the Settlement Class relating to the proposed settlement shall
9 promptly be furnished to Co-Lead Settlement Class Counsel and AEP.

10 17. All reasonable costs incurred in notifying members of the Settlement Class
11 and Subclasses shall be paid as set forth in the Settlement Agreement.

12 **Requests for Exclusion from the Settlement Class**

13 18. Any member of the Settlement Class wishing to be excluded from the
14 Settlement Class must have postmarked on or before October 20, 2008 (the "Opt-Out Deadline")
15 a request for exclusion addressed to the Settlement Administrator at the address provided in the
16 Mail Notice which states the Class member's name and address, states that the Class member
17 wishes to be excluded from the Settlement Class, and is signed by the Class member. In addition,
18 businesses requesting exclusion must list every address at which they received natural gas service
19 within the State of California between January 1, 1999 and December 31, 2002. For businesses
20 requesting exclusion, the exclusion request must be signed by someone with the legal authority to
21 act for the business, and state that person's name and capacity (e.g., owner, general partner,
22 president).

23 19. Within seven calendar days after the Opt-Out Deadline, the Settlement
24 Administrator shall send via electronic mail or other method approved by the parties to the
25 Settlement Agreement (through their counsel) to Co-Lead Settlement Class Counsel, and counsel
26 for AEP, a complete and final list of those persons or entities who have requested exclusion from
27 the Settlement Class, along with copies of all requests for exclusion that have been received.
28

1 20. Any member of the Settlement Class not properly and timely requesting
2 exclusion from the Settlement Class shall be included in the Settlement Class and in either or both
3 subclasses and, upon final approval of the Settlement Agreement, shall be bound by all the terms
4 and provisions of each Agreement, including but not limited to the releases, waivers and
5 covenants described in the Settlement Agreement, whether or not the class member objected to
6 the settlement and whether or not such person made a claim upon, or participated in, any of the
7 settlement funds created pursuant to the Settlement Agreement.

8 **The Fairness Hearing**

9 21. A hearing on final settlement approval (the "Fairness Hearing") is hereby
10 scheduled to be held before this Court on November 14, 2008 at 8:30 A.M. in
11 Department 71 to consider the fairness, reasonableness, and adequacy of the Settlement
12 Agreement, the entry of final judgment in the Class Actions with respect to AEP, and Settlement
13 Class Counsel's application for attorneys' fees and reimbursement of expenses. Briefs and other
14 papers in support of Plaintiffs' motion for final approval and Settlement Class Counsel's
15 application for attorneys' fees shall be filed on or before September 15, 2008. Reply briefs and
16 other papers responding to any objections to the proposed settlement and attorneys' fee
17 application shall be filed on or before November 3, 2008.

18 22. Any person who does not elect to be excluded from the Settlement Class
19 may, but need not, enter an appearance through his or her own attorney. Settlement Class
20 members who do not enter an appearance through their own attorneys will be represented by
21 Settlement Class Counsel.

22 23. Any person who does not elect to be excluded from the Settlement Class
23 may, but need not, submit comments or objections to the proposed settlement. All such
24 comments or objections and any supporting papers must be filed with the Clerk of the Court, in
25 writing, on or before the Opt-Out Deadline; must contain the caption *Natural Gas Antitrust Cases*
26 *I-IV, JCCP Nos. 4221, et al.*; and copies of all such papers must be postmarked or otherwise
27 dispatched for delivery to the following on or before the Opt-Out Deadline:
28

1 Barry R. Himmelstein
2 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
3 Embarcadero Center West
4 275 Battery Street, 30th Floor
5 San Francisco, CA 94111-3339

6 Plaintiffs' Co-Lead Settlement Class Counsel

7 - and -

8 Robert B. Wolinsky
9 HOGAN & HARTSON LLP
10 Columbia Square
11 555 Thirteenth Street, NW
12 Washington, DC 20004
13 Telephone: (202) 637-5600
14 Facsimile: (202) 637-5910

15 Counsel for AEP

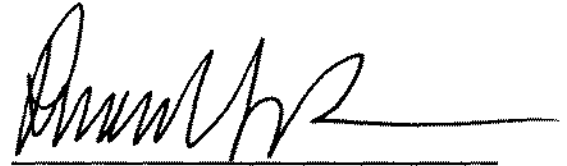
16 24. Attendance at the Fairness Hearing is not necessary; however, persons
17 wishing to be heard at the Fairness Hearing are required to file written comments or objections
18 and indicate in their written comments or objections their intentions to appear at the hearing.
19 Settlement Class members need not appear at the hearing or take any other action to indicate their
20 approval of the settlement.

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22 \\\

2 of notice, but shall be subject to adjournment by the Court without further notice to the members
3 of the Settlement Class other than that which may be posted at the Court and at the website
4 established pursuant to the Notice Program.

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6 SO ORDERED, this 18th day of July, 2008.



Hon. Ronald S. Prager
Coordination Trial Judge
Superior Court of the State of California

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